

## REMARKS

The pending Office Action addresses claims 1-29, however claims 1-13 are withdrawn from consideration. Remaining claims 14-29 stand rejected.

At the outset, Applicants thank Examiner Swiger for extending the courtesy of a telephone interview to Applicants undersigned representative on March 14, 2007. In the interview, the pending rejection of claims 14-29 was discussed and agreement was reached that the claims distinguish over the cited references.

### *Amendments to the Claims*

Applicants cancel withdrawn claims 1-13. Applicants reserve the right to pursue these claims in a divisional application.

### *Rejections Pursuant to 35 U.S.C. §103*

The Examiner rejects claims 14-29 pursuant to 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,200,322 of Branch et al. in view of U.S. Publication No. 2005/0085813 of Spitzer. The Examiner argues that Branch discloses the claimed invention except for a feature formed on a spinal fixation element, thus the Examiner relies on Spitzer to disclose the claimed feature.

As noted above, the Examiner has agreed that claims 14-29 distinguish over Branch and Spitzer. As discussed in the interview, Branch is directed to a method for implanting a disc implant, and does not teach or even suggest the claimed methods for implanting a spinal fixation element. In particular, Branch fails to teach the claimed access device, spinal anchor, and spinal fixation element recited in independent claims 14 and 27. The only component of Branch that can be considered to be an access device having a slot in the sidewall thereof is sleeve 100. However, sleeve 100 does not couple to a spinal anchor, as required by claims 14 and 27. Branch also fails to teach a spinal anchor. The only component of Branch that anchors to bone is sleeve 100, and sleeve 100 cannot form both an access device and a spinal anchor. Branch also fails to teach a spinal fixation element that is manipulated to sit within a receiving member of a spinal anchor. As indicated above, Branch discloses a disc implant that is positioned within a disc space. The disc implant is not manipulated to

sit within any type of spinal anchor. Accordingly, Branch is deficient for several reasons. Spitler does not remedy the deficiencies of Branch as Spitler is merely relied on to teach a spinal fixation element having a feature formed on a terminal end thereof. Spitler is also deficient because the disclosed feature is not prevented from passing through the slot in the sidewall of the cannula. Claim 14 requires a slot formed in the sidewall of the access device that is adapted to prevent the feature on the spinal fixation element from passing therethrough, and claim 27 similarly recites a feature that is sized to prevent passage thereof through the slot in the sidewall of the access device. Since Spitler's feature is specifically designed to be passed through the slot in the sidewall of the cannula, Spitler does not teach the claimed invention.

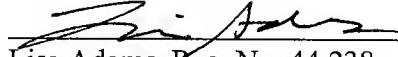
Independent claims 14 and 27, as well as claims 15-26 and 28-29 which depend therefrom, therefore distinguish over Branch and Spitler and represent allowable subject matter.

### ***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants as such communication is deemed to expedite the prosecution of this application.

Respectfully submitted,

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